

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.469/93

Wednesday, this the 23rd day of February, 1994.

SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)

N Sadasivan Nair,
Sr. SS Telecom(Rtd.)
Aradhana, XIX/108,
Pottayil Lane,
MG Road,
TRICHUR - 680 004.

- Applicant

By Advocate Mr MGK Menon

Vs.

1. Divisional Engineer(Admn.)
Office of the Telecom,
District Manager,
Cochin Devaswam Board Building,
Trichur.
2. Telecom District Manager,
Telecom District,
Trichur.
3. The Chief General Manager,
Telecom,
Trivandrum.
4. Union of India represented by
Chairman, Telecom Commission,
New Delhi. - Respondents

By Advocate Mr Kodoth Sreedharan, ACGSC

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N DHARMADAN, MEMBER(J)

Applicant is a retired Senior Section Supervisor.
He is aggrieved by the impugned order Annexure-A4, by which
his request for the release of the leave encashment due to
him on his retirement was rejected pending CBI case filed
against him.

2. Applicant retired from service on 30.9.1992 after long and continuous service of 34 years. Immediately before his retirement a CBI case was registered against him under Section 120-B read with 420 IPC and Section 13(1) D and 13(2) of PC Act, 1988. Annexure-A2 is the charge. Applicant is only the 4th accused. The charge is that the first accused received a sum of Rs.10,000/- Shri KKK Kurup/as illegal gratification, from the third accused, contractor, through the applicant who is the 4th accused. Due to the pendency of the CBI case, the DCRG and part of the pension of the applicant had been withheld. He is only getting a provisional pension. 240 days of earned leave accumulated in his credit and a sum of Rs.36,840/- is due to the applicant towards leave encashment. This was also withheld in addition to the DCRG and part of the pension. He submitted that he has no income and is suffering from old age ailments and hence the release of the above amount of Rs.36,840/- would be helpful to him. He applied for the release of same. It was rejected as per the impugned order.

3. The order does not, according to the applicant, give any sustainable reason. He relied on Rule 39 of CCS Leave Rules and submitted that his request for release of the aforesaid amount has been arbitrarily rejected by Annexure-A4 order which reads as follows:

"Please refer to your letter cited above on the subject. The matter has been examined in details on the basis of the relevant facts and circumstances of the CBI case, in question. It is regretted to inform you that the leave encashment can be released only on finalisation of the CBI case."

4. Having heard the learned counsel for the parties, we are of the view that Rule 39 of the CCS Leave Rules applies. The relevant portion is extracted below:

"Rule 39(3):

The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

Under the above rule, when a request of a retired employee for the disbursement of the amount due towards leave encashment is being considered having regard to the circumstances that such employee is an accused in a criminal case, the administrative authority should examine whether any possibility of recovering any amount from him after the completion of the case. In other words, the said rule makes it obligatory on the part of the administrative authority to decide as to whether he should "withhold cash equivalent to earned leave". For that purpose, the authority has to take into account the quantum of the liability of the employee which requires to be enforced against him after the conclusion of the case. In this case, admittedly at present there is no financial liability for the applicant. The financial liability, if any, may arise after conclusion of the CBI case and only when departmental action ~~xxxxxx~~ follows. It is to be remembered in this connection that the applicant is only the 4th accused who

acted as conduit pipe for conveying the payment of illegal gratification from third accused to first accused and the amount covered in only Rs.10,000/-. Already large amounts due to the applicant had been withheld. Under these circumstances, it becomes unnecessary and inequitable to withhold the above sum of Rs.36,840/- being leave encashment, particularly when the DCRG and part of pension amounting to nearly a lakh and a half amount due to him had already been withheld by the respondents according to the applicant.

5. Moreover, the authority is also bound to decide whether there is any possibility of recovering any amount from the applicant after the conclusion of the proceedings pending either in 'part or whole'. In the instant case, no such decision has been taken by the respondents. Hence under these circumstances, we are of the view that the respondents have not applied the mind and considered the claim of the applicant strictly in accordance with the provision of Rule 39(3) of the CCS Leave Rules.

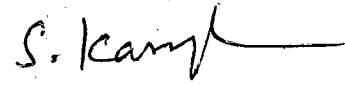
6. As already indicated, the applicant submitted that the respondents have already invoked the provisions of Rule 39(3) of the CCS Leave Rules and withheld the entire DCRG and part of the pension amounting to a sum of Rs.one lakh and half. The applicant is at present getting only the provisional pension. When such a huge amount is withheld, it is unnecessary for the respondents to withhold the sum of Rs.36,840/- due to the applicant towards leave encashment.

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7. In this view of the matter, we are satisfied that Annexure-A4 order cannot be sustained. Accordingly, we set aside Annexure-A4 and sent back the case to the second respondent for passing fresh orders considering of the applicant's contentions in the light of the above observation, bearing in mind the provisions of Rule 39(3) extracted above. This shall be done within a period of two months from the date of receipt of a copy of this order.

8. The OA is allowed as above. No costs.

Dated, the 23rd February, 1994.



(S. KASIPANDIAN)
MEMBER(A)



(N. DHARMADAN)
MEMBER(J)

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